
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-02-NY-212
)	
Cablevision of Newark)	NAL/Acct.No. 200332380013
)	
Woodbury, NY)	FRN: 0003-7361-39
)	

Released: January 27, 2003

By the District Director, New York Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Cablevision of Newark ("Cablevision") has apparently violated Sections 11.61(a)(1)(iii) and 11.61(b) of the Commission's Rules (the "Rules"),¹ by failing to conduct required monthly tests of the Emergency Alert System ("EAS"), and failing to maintain station records of required monthly and weekly EAS tests messages. We conclude that Cablevision is apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000).

II. BACKGROUND

2. On September 5, 2002, Commission agents conducted an inspection of Cablevision's, EAS, located at 360 Central Avenue, Newark, NJ 07103. At the time of inspection, Jai Bond, the supervisor on duty, was unable to provide station records of EAS test messages, as requested by Commission agents.

3. On September 18, 2002, a Commission agent revisited Cablevision to inspect the station records. Based upon the agent's inspection of Cablevision's station records and interview with Jai Bond, the supervisor on duty, he determined that Cablevision had failed to conduct weekly and monthly tests, and was not monitoring two EAS sources.

4. On October 7, 2002, the New York Office sent a Notice of Violation for failure to conduct required weekly and monthly EAS tests, and failure to monitor two EAS sources, by First Class and Certified Mail Return Receipt Requested, to Cablevision of Newark.

5. On October 21, 2002, the New York Office received a reply to the Notice of Violation from Paul W. Jamieson, counsel for Cablevision, stating that Cablevision showed compliance with

¹ 47 C.F.R. §§ 11.61(a)(1)(iii), and 11.61(b).

Federal Communications Commission

required EAS weekly testing from January 5, 2002 to August 24, 2002, and compliance with required EAS monthly testing from January 5, 2002 to August 31, 2002.

6. Since Cablevision's response to the Notice of Violation differed with the information obtained by a Commission agent during the station inspection, the agent obtained station records from station WFME(FM), Newark, NJ, Cablevision's primary source. Based on a review of those records, he determined that Cablevision:

- a) Failed to conduct required monthly tests of the EAS header codes, Attention Signal, Test Script and EOM code for the months of June 2002 and August 2002.
- b) Failed to maintain station records of required monthly EAS tests received for the months of June 2002 and August 2002, and log reasons why EAS tests were not received.
- c) Failed to maintain station records of required weekly EAS tests received for the weeks of May 5, 2002 to May 18, 2002, and August 4, 2002 to August 24, 2002, and log reasons why EAS tests were not received.

III. DISCUSSION

7. Section 11.61(a)(1)(iii) of the Commission's Rules requires cable stations to conduct monthly tests of the EAS header codes, Attention Signal, Test Script and EOM code that conforms to procedures in EAS Operating Handbook, and Section 11.61(a)(1)(v)² of the Rules. Cablevision's station records failed to show that required monthly tests of the EAS header codes, Attention Signal, Test Script and EOM code were conducted for the months of June 2002 and August 2002.

8. Section 11.61(b) of the Commission's Rules requires cable stations to make entries in station records of monthly and weekly EAS tests received. Entries were not made in the station records to show EAS tests received for the weeks of May 5, 2002 to May 18, 2002, and August 4, 2002 to August 24, 2002, or reasons why required weekly EAS tests were not received.

9. Based on the evidence before us, we find that Cablevision of Newark willful³ and repeated⁴ violated Sections 11.61(a)(1)(iii) and 11.61(b) of the Rules by failing to conduct required monthly tests of the EAS header codes, Attention Signal, Test Script and EOM codes for the months of June 2002 and August 2002, and by failing to log entries of reasons why required weekly EAS tests were not received for the weeks of May 5, 2002 to May 18, 2002, and August 4, 2002 to August 24, 2002.

² 47 C.F.R. § 11.61(a)(1)(v).

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act..." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

Federal Communications Commission

10. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")⁵, sets the base forfeiture amount for failure to make required measurements or conduct required monitoring at \$2,000, and base forfeiture for failure to maintain required records at \$1000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended,⁶ (the "Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a three thousand dollar (\$3,000) monetary forfeiture is warranted.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ Cablevision of Newark is hereby NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand dollars (\$3,000) for willful and repeated violations of Sections 11.61(a)(1)(iii) and 11.61(b) of the Commission's Rules.

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Cablevision of Newark SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200332380013 and FRN: 0003-7361-39.

14. Any response to this NAL must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 200332380013.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, and 0.311.

Federal Communications Commission

current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

17. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical and Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

18. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Cablevision of Newark, One Media Crossways, Woodbury, NY 11797, and a copy to Piper Rudnick, 1200 Nineteenth Street, N.W. Washington, D.C. 20036-2412.

FEDERAL COMMUNICATIONS COMMISSION

Daniel W. Noel
District Director
New York Office

Attachment A: Condensed List of Small Entities.

⁹ See 47 C.F.R. § 1.1914.